

**IN THE JUSTICE OF THE PEACE COURT OF THE
STATE OF DELAWARE IN AND FOR KENT COUNTY
COURT NO. 16**

JAMAL PIERCE,

Defendant Below,
Appellant,

v.

C.A. No. JP16-18-004552

FOX POINTE VILLAGE LLC,

Plaintiff Below,
Appellee.

TRIAL DE NOVO

Submitted: August 28, 2018

Decided: August 29, 2018

APPEARANCES:

Fox Pointe Village LLC, Plaintiff/Appellee, represented by Nicole M. Faries, Esquire.

Jamal Pierce, Defendant/Appellant, represented by Victoria J. Hoffman, Esquire.

ORDER

Cathleen M. Hutchison, Deputy Chief Magistrate
James A. Murray, Justice of the Peace
Kevin L. Wilson, Justice of the Peace

On August 28, 2018 this Court, consisting of the Honorable Cathleen M. Hutchison, the Honorable James A. Murray and the Honorable Kevin L. Wilson acting as a special court pursuant to 25 *Del. C.* § 5717(a) convened a trial *de novo* in reference to a Landlord/Tenant Summary Possession petition filed by Fox Pointe Village LLC (“Plaintiff”), against Jamal Pierce (“Defendant”). The Court, after hearing testimony and receiving evidence, recessed and deliberated before returning to the bench and announcing its decision in open court. The Court enters judgment for the plaintiff. This is the written follow-up to that oral decision.

Factual and Procedural Background

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking unpaid rent, possession and court costs. This action is based on the Defendants failure to pay rent. Trial was held on August 15, 2018 and the Court issued its Order entering judgment against the Defendant on August 16, 2018.¹ Defendant filed a timely appeal of the Court’s Order pursuant to 25 *Del. C.* § 5717(a). Consequently, trial *de novo* was scheduled.

Testimony and Evidence

Plaintiff seeks possession of the rental lot located at 88 N. Dayflower Court, Dover, Delaware for failure to pay rent. Plaintiff introduced the following exhibits: Rental Agreement Summary dated April 16, 2018 (Plaintiff’s Exhibit 1), 7-Day Non Payment Letter dated July 5, 2018 with certificate of mailing (Plaintiff’s Exhibit 2), Reservation of Rights Letter with certificate of mailing dated July 13, 2018 (Plaintiff’s Exhibit 3); Reservation of Rights Letter with certificate of mailing dated July 27, 2018 (Plaintiff’s

¹ *Fox Pointe Village v. Pierce*, Del. J.P., C.A. No. JP16-18-004552, Tracy, J. (Aug. 16, 2018).

Exhibit 4) and Eviction Notice in JP16-18-001266 (Plaintiff's Exhibit 5). The 7-day demand letter advised defendant that his lot rent in the amount of \$794.50 was past due. On July 9, 2018, defendant submitted a payment of \$770.00, which left an outstanding balance of \$24.50. Plaintiff accepted the payment and provided a Reservation of Rights Letter. On July 27, 2018 defendant submitted a payment of \$24.50 which left his balance at \$0.00. Defendant accepted the payment and provided a Reservation of Rights Letter. Defendant failed to make full payment within the 7-day demand period.

Defendant contends that plaintiff commingled payments for lot rent and the sale of the manufactured home. In addition, defendant contends rent from a previous agreement was mixed with the new lease agreement. Defendant introduced the following exhibits: Statement dated 8/27/2018 for Lot #39 (Defendant's Exhibit 1), Statement dated 8/27/2018 for monthly rent for house (Defendant's Exhibit 2), Statement dated 1/1/2018 for Lot #39 (Defendant's Exhibit 3), Installment Sales Agreement dated April 16, 2018 to purchase manufactured home identified as 2005 CMHM HS, VIN: HHC015602NCAB, Tag No. MH124781 (Defendant's Exhibit 4), Judgment by Admission – Summary Possession JP16-18-001266 (Defendant's Exhibit 5). Defendant points to paragraph 2 of the Installment Sales Agreement which reads in part:

2. Purchase Price. The total purchase price for the Property shall be \$4,200.00 payable as follows:

(a) \$2,200.00 to be paid on the execution of this Agreement to be partly applied to past due rent, and the balance of \$1,400.00 to be applied to the purchase price.

Defendant contends that \$1400.00 was applied to the purchase, however only \$640.00 was applied to the lot rent, with extra funds of \$160.00, which should have gone toward rent.

Plaintiff contends the extra \$160.00 was applied to the purchase price and when the new lease agreement was signed in April, defendant had a \$.50 credit.

Discussion and Findings

After a careful review of the evidence and testimony presented, the Court finds that the Plaintiff met the burden of proof to show that defendant failed to pay rent as required. The Court finds that all of the defendant's payments were properly credited. Defendant failed to make full payment within the 7-day demand period. Defendant was issued two reservation of rights letters. Defendant's claim that the additional amount from the installment sales agreement should have been applied to future rent is without merit. The contract clearly states that the payment was to be applied to past due rent.

Conclusion

Based on the foregoing, the panel finds by unanimous verdict in favor of the plaintiff Fox Pointe Village LLC and against Jamal Pierce for possession.

Decision announced in open Court.

IT IS SO ORDERED, this 29th day of August, 2018.

For the Court,

 (SEAL)
Cathleen M. Hutchison

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